

ORDINANCE 2114

AN ORDINANCE OF THE TOWN OF LOS GATOS AMENDING THE ZONING ORDINANCE OF THE TOWN CODE, CHAPTER 29, DIVISION 2, SECTION 29.10.0950 THROUGH 29.10.0985, TO REVISE THE TREE PROTECTION ORDINANCE

THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS FOLLOWS:

SECTION I

Town Code Chapter 29, Division 2 (sections 29.10.0950 through 29.10.0985) is deleted in its entirety.

SECTION II

Town Code Chapter 29, Zoning Regulations, Article 1, Division 2, Tree Protection, is hereby amended to read as follows:

Sec. 29.10.0950. Intent.

This division is adopted because the Town of Los Gatos is forested by Oak, Bay, Eucalyptus, Sycamore, Redwood, Pine and other trees, and contains individual trees of great beauty. The health and welfare of the citizens of the Town require that these trees be saved in order to preserve the scenic beauty of the Town, prevent erosion of topsoil, provide protection against flood hazards and risk of landslides, counteract pollutants in the air, maintain climatic balance and decrease wind velocities. Trees contribute significantly to the value of land in the Town. It is the intent of this division to regulate the removal of trees within the Town in order to retain as many trees as possible consistent with the purpose of this section and the reasonable use of private property. It is the intent of this Division to preserve as many Protected Trees as possible throughout the Town through staff review and the development review process. This section does not supersede the provisions of Division 26 of this Code.

Sec. 29.10.0955. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section.

Building envelope means the area of a parcel that (1) upon which, under applicable zoning regulations, a structure may be built outside of required setbacks without a variance or; (2) is necessary for the construction of primary access to structures located on the parcel, where there exists no feasible means of access which would avoid Protected Trees. On single-family residential parcels, the portion of the parcel deemed to be the building envelope access shall not exceed ten (10) feet in width.

Certified or consulting arborist means an individual in the profession of arboriculture who, through experience, education, and related training, possesses the competence to provide a tree report, tree survey or supervise the care and maintenance of trees; and who is certified by the International Society of Arboriculture, a member of the American Society of Consulting Arborists or approved by the Director.

Dangerous means a tree, which is an imminent hazard or threat to the safety of persons or property as determined by a certified arborist or the deciding body.

Development means any work upon any property in the Town which requires a subdivision, planned community zone, variance, use permit, building permit, demolition permit, grading permit or other Town approval or which involves excavation, landscaping, construction or clearing and grubbing within the dripline or any area that would affect a Protected Tree.

Diameter means measurement of the trunk diameter for the purpose of applying this section shall be made three feet (36-inches) above natural grade. Measurement of multi-trunked trees shall be determined by the sum of all trunks measured above the trunk union.

Director means the Director of Community Development, Director of Parks and Public Works or the Director's designated representative.

Dripline area means the area within X distance from the perimeter of the trunk of the tree at three feet (36-inches) above natural grade, where X equals a distance ten times the diameter of the trunk as measured at three feet (thirty-six inches).

Protected Tree means a woody perennial plant, usually with one (1) main stem or trunk, and many branches. It may appear to have several stems or trunks and is usually over ten (10) feet high at maturity. A tree in the Protected Tree category means a tree regulated by the Town of Los Gatos (as set forth in Section. 29.10.0960, Scope of Protected Trees.)

Pruning means the selective removal of plant parts to meet specific goals and objectives, such as to control growth and enhance performance or function by developing and preserving tree structure and health in accordance with the current version of the Best Management Practices—Tree Pruning (ANSI A300—Part 1), produced by the International Society of Arboriculture (ISA).

Public Nuisance, as described in Section 26.10.055, means any trees, shrubs, plants or parts thereof growing in, or overhanging, a public street or right-of-way, or upon private property, interfering with the use of any public street or public place in the Town, or trees which, in the opinion of the Director, endanger the life, health, safety, comfort or property of any persons using such public street, or in such public place, because of the tree's or shrub's location, condition of its limbs, roots or trunk, or because of its diseased condition, is hereby declared to be a public nuisance.

Remove means any of the following: (1) Complete removal, such as cutting to the ground or extraction, of a Protected Tree; (2) Taking any action foreseeably leading to the death of a tree or permanent damage to its health; including but not limited to severe pruning, cutting, girdling, poisoning, overwatering, unauthorized relocation or transportation of a tree, or trenching, excavating, altering the grade, or paving within the dripline area of a tree.

Severe pruning means either the removal of more than one-fourth of the functioning leaf and stem area of a tree in any twelve-month period, topping or removal of foliage so as to cause the unbalancing or unnatural shape of a tree.

Shrub means a bushy, woody plant, usually with several permanent stems, and usually not over fifteen (15) feet high at maturity.

Significant impact from a tree on a property means an unreasonable interference with the normal and intended use of the property. In determining whether there is a significant impact, the typical longevity of the subject tree species, the size of the tree relative to the property, and whether the condition can be corrected shall be considered. Normal maintenance, including but not limited to, pruning, and leaf removal and minor damage to paving or fences shall not be considered when making a determination of significant impact.

Street tree means those trees in a public place, or along or within a public street or right-of-way.

Topping means heading back of the crown and/or creating large stubs without regard to form.

Tree Protection Zone (TPZ) means the area of temporary fenced tree enclosure under the tree's Dripline or as specified in a report prepared by a certified or consulting arborist. The TPZ is a restricted activity zone where no soil disturbance is permitted unless approved and supervised by the certified or consulting arborist.

Tree Canopy Standard means a replacement tree formula to mitigate removal of a Protected Tree. The standard is based on measuring the widest distance across the canopy of a tree for the purpose of determining the mitigating size and number of replacement trees.

Tree Value Standard means the method of appraising a tree's value to a property using the trunk formula as described in the most recent edition of the Guide for Plant Appraisal published by the Council of Tree and Landscape Appraisers (CTLA).

Undeveloped Lot means any lot that is significantly under-developed or utilized against current zoning. Parcels that feature roads, walls, landscaping or other such improvements are considered undeveloped (See also, *vacant lot*).

Vacant Lot means any lot featuring existing development that is no longer occupied or otherwise used in accordance with existing zoning (See also, *undeveloped lot*)

Sec. 29.10.0960. Scope of Protected Trees.

This division shall apply to every property owner and to every person, corporation, partnership, sole proprietorship or other entity responsible for removing, maintaining or protecting a tree. The trees protected by this division are:

1. All trees which have a twelve-inch or greater diameter (thirty-seven and one half-inch circumference) of any trunk, or in the case of multi-trunk trees a total of twelve-inches or greater diameter or more of the sum diameter (thirty-seven and one half-inch circumference) of all trunks, where such trees are located on developed residential property.
2. All trees of the following species which have an eight inch diameter (twenty-five inch circumference):
 - a. Blue Oak (*Quercus douglasii*)
 - b. Black Oak (*Quercus kelloggii*)
 - c. California Buckeye (*Aesculus californica*)
 - d. Pacific Madrone (*Arbutus menziesii*)
3. All trees which have a four-inch or greater diameter (twelve-and one half-inch circumference) of any trunk, when removal relates to any review for which zoning approval or subdivision approval is required.
4. Any tree that existed at the time of a zoning approval or subdivision approval and was a specific subject of such approval or otherwise covered by subsection (2) of this section (e.g., landscape or site plans).

5. Any tree that was required to be planted or retained by the terms and conditions of a development application, building permit or subdivision approval in all zoning districts, tree removal permit or code enforcement action.
6. All trees which have a four-inch or greater diameter (twelve and one-half inch circumference) of any trunk and are located on a vacant lot or undeveloped property.
7. All trees, which have a four-inch or greater diameter (twelve and one half-inch circumference) of any trunk and are located on developed commercial, office, or industrial property.
8. All publicly owned trees growing on Town lands, public places or in a right-of-way easement.
9. A Protected Tree may also be a stand of trees, the nature of which makes each dependent upon the other for the survival of the stand.

Measurement of trunk diameter (circumference) for the purpose of applying this section shall be made three (3) feet above natural grade. Measurement of multi-trunked trees shall be determined by the sum of all trunks measured above the trunk union.

Sec. 29.10.0965. Prohibitions.

Except as provided in Section 29.10.0970, it shall be unlawful for anyone:

1. To remove or cause to be removed any Protected Tree in the Town without obtaining a permit to do so.
2. For any person or business entity engaged in the business of removing trees or tree care to remove a Protected Tree without a permit under this division. This permit shall be on-site at all times during the removal of a tree and must be made available upon request from the Chief of Police, Code Compliance Officer, Director of Parks and Public Works Department, or their designee.

Sec. 29.10.0970. Exceptions.

The following tree removals and conditions are excepted from the provisions of this division and may be removed without Town approval or issuance of a Tree Removal Permit:

1. Emergencies. If the condition of a tree presents an immediate hazard to life or property, it may be removed without a permit on order of the Town Manager, the Town Engineer, the Planning Director, the Public Works Director or a member of the police, fire, or emergency personnel.
2. A fruit or nut tree that is less than 18-inches in diameter (fifty-seven-inches circumference).

Sec. 29.10.0975. Emergency Action.

A person may remove or severely prune a Protected Tree without a permit if there is an emergency caused by the Protected Tree being in a hazardous or dangerous condition--requiring immediate corrective action to abate the condition. In such event, the property owner or representative shall be responsible for the following notification:

1. Notify the Town (Parks and Public Works Department during business hours/ Police Department after business hours) prior to removal in order to confirm the emergency situation. If the Town confirms the emergency situation, photo documentation and written verification by the tree service

removing the tree will be required.

2. After the abatement, no later than two days from the date the tree was removed or severely pruned because of the emergency, the property owner shall apply for a Tree Removal Permit, and submit to the Director the documentation required above and in Section 29.10.0980.

If the Director determines that the condition was not an emergency requiring immediate action, the person responsible for removing or damaging the Protected Tree shall be subject to fines and penalties as set forth in Section 29.10.1025.

Sec. 29.10.0980. Applications for a Tree Removal Permit.

Applications for a Protected Tree Removal Permit for trees on private property shall be available from and filed with the Community Development Department. Application submittals for the removal of trees on public property (street trees) are provided for in Chapter 26.10.060 of the Town Code. Applications for tree removal may be granted, denied or granted with conditions. Application submittals for trees on private property shall include the following minimum information for staff review:

1. A completed Tree Removal Application Form, signed by the property owner or agent.
2. A written explanation of why each tree(s) should be removed and how it meets the Town's standard for allowable removal.
3. Photograph(s) of the tree(s)
4. If required by the Director, a certified or consulting arborist's written assessment of the tree's disposition shall be provided for review by the Town. The report shall be on company letterhead and include tree size (diameter, height, crown spread); location on the site; numbered on a site plan or arborists tree survey (if there is more than one tree); condition of health; condition of structure; and if hazard tree findings apply, an ISA Hazard Rating Form. Other information, images, etc. may be included in the report.
5. Permit fee, as established by Town resolution.

Sec. 29.10.0985. Determination and Conditions of Permit.

The Director of Community Development shall determine whether to grant the permit. The Director may consult with other Town departments or outside agencies at his/her discretion. When a development application for any zoning approval, or subdivision of land, including lot line adjustment, is under consideration by the Planning Commission, the determination on the tree removal permit shall be made concurrently by the Planning Commission with the related matter. The Director or the deciding body shall impose, except when removal is permitted if the tree is dead or a hazardous condition exists, as a condition on which a Protected Tree removal permit is granted that two or more replacement trees of a species and a size designated by the Director of Parks and Public Works Department, shall be planted in the following order of preference:

1. Two or more replacement trees, of a species and size designated by the Director of Parks and Public Works Department, shall be planted on the subject private property. Table 3-1 The Tree Canopy—Replacement Standard shall be used as a basis for this requirement. The person requesting the permit shall pay the cost of purchasing and planting the replacement trees.
2. If a tree cannot be reasonably planted on the subject property, the value of the removed tree(s) shall

be paid to the Town Forestry Fund to:

- a. Add or replace trees on public property in the vicinity of the subject property or
- b. Add trees or landscaping on other Town property. Replacement value of a tree shall be determined using the most recent edition of the Guide for Plant Appraisal, as prepared by the Council of Tree and Landscape Appraisers.

Table 3-1 - Tree Canopy - Replacement Standard

COLUMN 1	COLUMN 2	COLUMN 3
Canopy of the Removed Tree ¹ (Maximum distance across the canopy)	Replacement Trees	Alternative Tree
4'-9'	Two 24" Box Size (Minimum)	One 36" Box Size
10'-27'	Three 24" Box Size	Two 36" Box Size
28'-40'	Four 24" Box Size	Two 48" Box Size
40'-56'	Six 24" Box Size	Two 36" Box Size Two 48" Box Size
56'-60'	Two 24" Box and Two 36" Box plus Two 48" Box Size	² below
60' +	² below	² below

Using Table 3-1

Table 3-1, is a matrix formula used to determine how many trees will be required for planting to approximate the lost canopy of the removed tree over the course of ten years with moderate care.

1. To measure an asymmetrical canopy of a tree, the widest measurement shall be used to determine canopy size.
2. Often, it is not possible to replace a single large, older tree with an equivalent tree(s). In this case, the tree shall be replaced with a combination of both the Tree Canopy and Tree Value Standards as determined by the Director.

Sec. 29.10.0990. Standards of Review.

Each application for a tree removal permit required by this division shall be reviewed using the following criteria:

1. The condition of the tree or trees with respect to disease, imminent danger of falling or structural failure, proximity to existing or proposed structures based on a report from a certified arborist, structural damage to a building or a public nuisance caused by a tree. The danger of falling or failure shall be rated using the ISA Tree Hazard Rating Form or an approved equivalent.
2. The condition of the tree giving rise to the permit application cannot be reduced to a less than significant level by the reasonable application of preservation, preventative measures or routine maintenance.

3. The removal of the tree(s) will not result in a density of trees or tree cover that is inconsistent with the neighborhood.
4. The number of trees the particular parcel can adequately support according to good urban forestry practices, or whether a Protected Tree is a detriment to or crowding another Protected Tree.
5. In connection with a proposed subdivision of land into two or more parcels, no Protected Tree shall be removed unless removal is unavoidable due to restricted access to the property or deemed necessary to repair a geologic hazard (landslide, repairs, etc.) The tree removed shall be replaced in accordance with the standards in Section 29.10.0985 of this code. Tree preservation and protection measures for any lot that is created by a proposed subdivision of land shall comply with the regulations of this code.
6. The retention of a Protected Tree would result in reduction of the otherwise-permissible building envelope by more than twenty-five percent. In such a case, the removal shall be conditioned upon replacement in accordance with the standards in Section 29.10.0985 of this code.
7. The Hillside Development Standards and Guidelines, current version.
8. Removal of the Protected Tree(s) will not result in a substantial adverse change in the site's aesthetic and biological significance; the topography of the land and the effect of the removal of the tree on erosion, soil retention, or diversion or increased flow of surface waters.
9. Whether the Protected Tree has a significant impact on the property.

Sec. 29.10.0995. Disclosure of Information Regarding Existing Trees.

- A. Any application for a discretionary development approval, or for a building or demolition permit where no discretionary development approval is required, shall be accompanied by a signed tree disclosure statement by the property owner or authorized agent which discloses whether any Protected Trees exist on the property which is the subject of the application, and describing each such tree, its species, size (diameter, canopy dripline area, height) and location. This requirement shall be met by including the following information on plans submitted in connection with the development application.
- B. In addition, the location of all other trees on the site and in the adjacent public right-of-way which are within thirty-feet of the area proposed for development, and trees located on adjacent property with canopies overhanging the project site, shall be shown on the plans, identified by species.
- C. Within the dripline area or area that would affect a Protected Tree, the location of shrubs and other vegetation subject to development shall be shown on the plans.
- D. The Director may require submittal of such other information as is necessary to further the purposes of this Division including but not limited to photographs.
- E. Disclosure of information pursuant to this section shall not be required when the development for which the approval or permit is sought does not involve any change in building footprint nor any grading, trenching or paving.
- F. Knowingly or negligently providing false or misleading information in response to this disclosure requirement shall constitute a violation of this Division.

Sec. 29.10.1000. New property development.

- A. A tree survey shall be conducted prior to submittal of any development application proposing the removal of or impact to one or more Protected Trees. The development application shall include a Tree Survey Plan and Tree Preservation Report based on this survey. The tree survey inventory numbers shall correspond to a numbered metal tag placed on each tree on site during the tree survey. The tree survey plan shall be prepared by a certified or consulting arborist, and shall include the following information:
1. Location of all existing trees on the property as described in Section 29.10.0995;
 2. Identify all trees that could potentially be affected by the project (directly or indirectly—immediately or in long term), such as upslope grading or compaction outside of the dripline;
 3. Notation of all trees classified as Protected Trees;
 4. In addition, for trees 4-inches in diameter or larger, the plan shall specify the precise location of the trunk and crown spread, and the species, size (diameter, height, crown spread) and condition of the tree.
- B. The tree survey plan shall be forwarded to the Director who shall, after making a field visit to the property, indicate in writing or as shown on by approved plans, which trees are recommended for preservation (based on a retention rating of high/moderate/low) using, as a minimum, the standards set forth in Section 29.10.0990. This plan shall be made part of the staff report to the Town reviewing body upon its consideration of the application for new property development;
- C. Tree Preservation Report. When development impacts are within the dripline of or will affect any Protected Tree, the applicant shall provide a tree preservation report prepared by a certified or consulting arborist. The report, based on the findings of the tree survey plan and other relevant information, shall be used to determine the health and structure of existing trees, the effects of the proposed development and vegetation removal upon the trees, recommendations for specific precautions necessary for their preservation during all phases of development (demolition, grading, during construction, landscaping); and shall also indicate which trees are proposed for removal. The Tree Preservation Report shall stipulate a required tree protection zone (TPZ) for trees to be retained, including street trees, Protected Trees and trees whose canopies are hanging over the project site from adjacent properties. The TPZ shall be fenced as specified in Section 29.10.1005;
1. The final approved Tree Preservation Report shall be included in the building permit set of development plans and printed on a sheet titled: Tree Preservation Instructions (Sheet T-1). Sheet T-1 shall be referenced on all relevant sheets (civil, demolition, utility, landscape, irrigation) where tree impacts from improvements may be shown to occur;
 2. The Town reviewing body through its site and design plan review shall endeavor to preserve all trees recommended for preservation by the Director. The Town reviewing body may determine that any of the trees recommended for preservation should be removed, if there is evidence submitted, that due to special site grading or other unusual characteristics associated with the property, the preservation of the tree(s) would significantly preclude feasible development of the property as described in Section 29.10.0990;
 3. Approval of final site or landscape plans by the appropriate Town reviewing body shall

comply with the following requirements and conditions of approval:

- (a) The applicant shall, within 90 days of final approval or prior to issuance of a grading or building permit, whichever occurs first, secure an appraisal of the condition and replacement value of all trees included in the tree report affected by the development that are required to remain within the development. The appraisal of each tree shall recognize the location of the tree in the proposed development. The appraisal shall be performed in accordance with the current edition of the "Guide for Plant Appraisal" under the auspices of the International Society of Arboriculture. The appraisal shall be performed at the applicant's expense, and the appraisal shall be subject to the Director's approval.
 - (b) The site or landscape plans shall indicate which trees are to be removed. However, the plans do not constitute approval to remove a tree until a separate permit is granted. The property owner or applicant shall obtain a Protected Tree removal permit, as outlined in Section 29.10.0980, for each tree to be removed to satisfy the purpose of this Division.
- D. Prior to acceptance of proposed development or subdivision improvements, the developer shall submit to the Director a final tree preservation report prepared by a certified or consulting arborist. This report shall consider all trees that were to remain within the development. The report shall note the trees' health in relation to the initially reported condition of the trees and shall note any changes in the trees' numbers or physical conditions. The applicant will then be responsible for the loss of any tree not previously approved for removal. For trees that are not Protected Trees, which were removed, the developer shall pay a fine in the amount equal to the appraised value of the subject tree. For Protected Trees, which were removed, the developer shall pay a fine in the amount of the appraised value of such tree in addition to replacement requirements contained in Section 29.10.0985 of this code. The applicant shall remain responsible for the health and survival of all trees within the development for a period of one year following acceptance of the public improvements of the development.
- E. Protective fencing inspection. Prior to issuance of any demolition, grading or building permit, the applicant or contractor shall submit to the building department a written statement verifying that the required tree protection fence is installed around street trees and Protected Trees in accordance with the Tree Preservation Report.
- F. If required by the Director and conditioned as part of a discretionary approval, a security guarantee shall be provided to the Town. Prior to the issuance of any permit allowing construction to begin, the applicant shall post cash, bond or other security satisfactory to the Director, in the penal sum of five thousand dollars for each tree required to be preserved, or twenty-five thousand dollars, whichever is less. The cash, bond or other security shall be retained for a period of one year following acceptance of the public improvements for the development and shall be forfeited in an amount equal to five thousand dollars per tree as a civil penalty in the event that a tree or trees required to be preserved are removed, destroyed or severely damaged.
- G. An applicant with a proposed development which requires underground utilities shall avoid the installation of said utilities within the dripline of existing trees whenever possible. In the event that this is unavoidable, all trenching shall be done using directional boring, air-spade excavation or by hand, taking extreme caution to avoid damage to the root structure. Work within the dripline of existing trees shall be supervised at all times by a certified or consulting arborist.
- H. It shall be a violation of this Division for any property owner or agent of the owner to fail to comply

with any development approval condition concerning preservation, protection, and maintenance of any Protected Tree.

Sec. 29.10.1005 Protection of trees during construction.

A. Protective tree fencing shall specify the following:

- (1) Size and materials: A five or six foot high chain link fencing, mounted on two- inch diameter galvanized iron posts, shall be driven into the ground to a depth of at least 2-feet at no more than 10-foot spacing. For paving area that will not be demolished and when stipulated in a tree preservation plan, posts may be supported by a concrete base.
- (2) Area type to be fenced. Type I: Enclosure with chain link fencing of either the entire dripline area or at the tree protection zone (TPZ), when specified by a certified or consulting arborist. Type II: Enclosure for street trees located in a planter strip: chain link fence around the entire planter strip to the outer branches. Type III: Protection for a tree located in a small planter cutout only (such as downtown): orange plastic fencing shall be wrapped around the trunk from the ground to the first branch with 2-inch wooden boards bound securely on the outside. Caution shall be used to avoid damaging any bark or branches.
- (3) Duration of Type I, II, III fencing. Fencing shall be erected before demolition, grading or construction begins and remain in place until final landscaping is required. Contractor shall first obtain the approval of the project arborist on record prior to removing a tree protection fence.
- (4) Warning Sign. Each tree fence shall have prominently displayed an 8.5 x 11-inch sign stating: "Warning-Tree Protection Zone—this fence shall not be removed and is subject to penalty according to Town Code 29.10.1025".

B. All persons, shall comply with the following precautions:

- (1) Prior to the commencement of construction, install the fence at the dripline, or tree protection zone (TPZ) when specified in an approved arborist report, around any tree and/or vegetation to be retained which could be affected by the construction and prohibit any storage of construction materials or other materials or vehicles inside the fence. The dripline shall not be altered in any way so as to increase the encroachment of the construction.
- (2) Prohibit excavation, grading, drainage and leveling within the dripline of the tree unless approved by the Director.
- (3) Prohibit disposal or depositing of oil, gasoline, chemicals or other harmful materials within the dripline of or in drainage channels, swales or areas that may lead to the dripline of a Protected Tree
- (4) Prohibit the attachment of wires, signs or ropes to any Protected Tree.
- (5) Design utility services and irrigation lines to be located outside of the dripline when feasible.
- (6) Retain the services of the certified or consulting arborist for periodic monitoring of the project site and the health of those trees to be preserved. The certified or consulting arborist shall be present whenever activities occur which poses a potential threat to the health of the

trees to be preserved.

- (7) The Director and project arborist shall be notified of any damage that occurs to a Protected Tree during construction so that proper treatment may be administered.

Sec. 29.10.1010 Pruning and Maintenance.

All pruning of Protected Trees shall be consistent with the current edition of Best Management Practices—Tree Pruning, established by the International Society of Arboriculture (ISA), and any special conditions as determined by the Director. For developments, which require a tree preservation report, a certified or consulting arborist shall be in reasonable charge of all activities involving Protected Trees, including pruning, cabling and fertilizing if specified.

- A. Any public utility installing or maintaining any overhead wires or underground pipes or conduits in the vicinity of a Protected Tree shall obtain permission from the Director before performing any work, including pruning, which may cause injury to a Protected Tree. (e.g. cable TV/fiber optic trenching, gas, water, sewer trench, etc.).
- B. Pruning for clearance of utility lines and energized conductors shall be performed in compliance with the current version of the American National Standards Institute (ANSI) A300 (Part 1)-Pruning, Section 5.9 Utility Pruning. Using spikes or gaffs when pruning is prohibited.

Sec. 29.10.1015 No Limitation of Authority

Nothing in this Division limits or modifies the existing authority of the Town under Division 29 of Title 29 (Zoning Regulations), Title 26 (Trees and Shrubs) or the Hillside Development Standards and Guidelines to require trees and other plants to be identified, retained, protected, and/or planted as conditions of the approval of development. In the event of conflict between provisions of this Division and conditions of any permit or other approval granted pursuant to Chapter 29, Chapter 26 of the Town Code or Hillside Development Standards and Guidelines, the more protective requirements shall prevail.

Sec. 29.10.1020 Responsibility for Enforcement.

All officers and employees of the Town shall report violations of this Division to the Director of Community Development, who shall enforce this Division. Issuance of citations may be delegated to the following: Director of Parks and Public Works, Code Compliance Officer, Town Arborist and Town Peace Officers.

Sec. 29.10.1025 Enforcement - Remedies for Violation.

In addition to all other remedies set forth in this code or otherwise provided by law, the following remedies shall be available to the Town for violation of this Division:

- A. Tree removals in absence of or in anticipation of development. If a violation occurs in the absence of or prior to proposed development, then discretionary applications and/or building permit applications will not be accepted or processed by the Town until the violation has been remedied. Mitigation measures as determined by the Director may be imposed as a condition of any subsequent application approval or permit for development on the subject property.
- B. Pending development applications. Incomplete applications will not be processed further until the violation has been remedied. If an application has been deemed complete, it may be denied by the Director or forwarded to the Planning Commission with a recommendation for denial at the Director's discretion. Mitigation measures as determined by the Director may be imposed as a

condition of approval.

C. Projects under construction.

- (1) If a violation occurs during construction, the Town may issue a stop work order suspending and prohibiting further activity on the property pursuant to the grading, demolition, and/or building permit(s) (including construction, inspection, and issuance of certificates of occupancy) until a mitigation plan has been filed with and approved by the Director, agreed to in writing by the property owner(s) or the applicant(s) or both, and either implemented or guaranteed by the posting of adequate security in the discretion of the Director.
- (2) The violation of any provisions in this Division during the conduct by any person of a tree removal, landscaping, construction or other business in the Town shall constitute grounds for revocation of any business license issued to such person.

D. Mitigation Plans. A mitigation plan shall include specific measures for the protection of any remaining trees on the property, and shall provide for the replacement of each tree that was removed in the same location as the removed tree or as determined by the Director of Community Development, or by the Director of Parks and Public Works, if replacement is to occur on public property. The replacement ratio shall be at a greater ratio than that required in accordance with the standards set forth in Section 29.10.0985 of this Division.

E. Civil Penalties.

Notwithstanding Section 29.20.950 relating to criminal penalty, any person found to have violated Section 29.10.0965 shall be liable to pay the Town a civil penalty as prescribed in subsections (1) through (4).

- (1) As part of a civil action brought by the Town, a court may assess against any person who commits, allows, or maintains a violation of any provision of this Division a civil penalty in an amount not to exceed five thousand dollars per violation.
- (2) Where the violation has resulted in removal of a Protected Tree, the civil penalty shall be in an amount not to exceed five thousand dollars per tree unlawfully removed, or the replacement value of each such tree, whichever amount is higher. Such amount shall be payable to the Town and deposited into the street tree deposit account. Replacement value for the purposes of this section shall be determined utilizing the most recent edition of the Guide for Plant Appraisal, as prepared by the Council of Tree and Landscape Appraisers.
- (3) If the court or Director directs a replacement tree or trees to be planted as part of remedy to the violation, the trees shall be permanently maintained in a good and healthy condition. The property owner shall execute a two-year written maintenance agreement with the Town.
- (4) The cost of enforcing this Division, which shall include all costs, staff time, and attorneys' fees.

F. Injunctive Relief. A civil action may be commenced to abate, enjoin, or otherwise compel the cessation of such violation.

G. Costs. In any civil action brought pursuant to this Division in which the Town prevails, the court shall award to the Town all costs of investigation and preparation for trial, the costs of trial, reasonable expenses including overhead and administrative costs incurred in prosecuting the action, and reasonable attorney fees.

Sec. 29.10.1030 Fees.

The fee, as adopted by Town Resolution, prescribed therefore in the municipal fee schedule shall accompany the removal permit application submitted to the Town for review and evaluation pursuant to this Division.

Sec. 29.10.1035 Severability.

If any provision of this Division or the application thereof to any person or circumstance is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision of this Division which can be given effect without the invalid provision or application, and to this end the provisions of this Division are declared to be severable.

Sec. 29.10.1045 Appeals.

Any person seeking the Director's approval to remove a Protected Tree pursuant to this Ordinance who is aggrieved by a decision of the Director may appeal such decision in accordance with the procedures set forth in Section 29.20.255 of the Town Code.

SECTION III

If any of the provisions of this ordinance or the application thereof to any person or property is held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION IV

Any judicial review of this ordinance shall be by writ of mandate, under Code of Civil Procedure 1085. Any action or proceedings seeking to attack, review, set aside, void or annul this ordinance shall be commenced within 90 days after adoption of this ordinance.

SECTION V

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on June 16, 2003, and adopted by the following vote as an ordinance of the Town of Los Gatos at a meeting of the Town Council of the Town of Los Gatos on August 4, 2003 and becomes effective 30 days after it is adopted.

COUNCIL MEMBERS:


AYES: Steve Glickman, Diane McNutt, Joe Pirzynski, Mike Wasserman,
Mayor Sandy Decker.

NAYS: None

ABSENT: None

ABSTAIN: None

SIGNED:


MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:


CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA